

10.06.2025
Item No.2.
Ct. No.446.
ssd

CO/929/2024
SHARAT DAS
VS
SAMIR DUTTA
IA NO: CAN/2/2025

Mr. Amit Baran Dash,
Mr. Subhrajyoti Ghosh,
Ms. Ankana Sarkar
..for the Petitioner.

The instant civil revisional application is directed against an order dated 1st February, 2024 passed by the learned Civil Judge (Junior Division), Nabadwip, Nadia in Title Suit No.18 of 2021 whereby the prayer for amendment of the plaint has been refused on the ground that the same will change the nature and character of the suit.

In this matter none appears on behalf of the opposite party.

The direction was given by this Court to the petitioner to intimate the opposite party afresh and accordingly, the affidavit of service has been filed which reveals that the item has been delivered on 24th May, 2025.

The affidavit of service filed by the petitioner before this Court be kept with the record.

Considering the intimation was given to the opposite party and despite the same, none appears on behalf of the opposite party.

The hearing of the matter is taken up by this Court and accordingly to be disposed of.

The fact of the case is placed before this Court is that one title suit was filed for declaration being Title Suit No.18 of 2021 by the present petitioner/plaintiff along with an application under Order XXXIX Rules 1 and 2 read with Section 151 of the Code of Civil Procedure before the Court of learned Civil Judge (Junior Division), Nabadwip, Nadia which was pending for adjudication. During pendency of the said proceeding the opposite party has alleged to have encroached certain portion of the suit property by raising an illegal construction. The incident took place after filing of the title suit and, therefore, it could not be incorporated in the plaint of the said title suit.

Accordingly, the plaintiff had to file an application under Order VI Rule 17 of the C.P.C. to amend the plaint by incorporating the said subsequent factors and with a prayer for recovery of the said encroached portion.

The matter was taken up for hearing by the learned Civil Judge (Junior Division), Nabadwip, Nadia on 1st February, 2024 and after hearing both

the learned Advocates, was pleased to reject such application considering that the amendment cannot be allowed.

No objection was filed on behalf of the opposite party against such application.

It is submitted that unless such amendment is allowed the purpose of filing the suit will be frustrated.

In the application filed under Order VI Rule 17 it was mentioned that one Bharati Bhattacharya was in possession in respect of the schedule property, sold away the same to the plaintiff by way of registered sale deed dated 12.10.2018 and after purchase the plaintiff mutated his name in the L.R.R.O.R. as well as Municipal tax assessment register and is possessing the 'A' Schedule property since then by paying municipal taxes. The defendant opposite party herein being the owner in respect of 'B' Schedule property situated just contiguous to the east of 'A' Schedule property and in order to grab more, on the property of the plaintiff, started new construction by touching eastern side of the 'A' Schedule property on 23.01.2021 without leaving any space in between 'A' and 'B' Schedule property. The opposite party has also constructed 12 number of column measuring 10/10 length about 8 ft. one sanitary chamber at the extreme western side in

respect of 'B' Schedule property but it touches the eastern side of 'A' Schedule property without leaving space from the 'B' Schedule property.

It was further mentioned that despite repeated request, the defendant did not stop such illegal construction and the plaintiff informed the entire facts by issuing a letter to the Chairperson, Nabadwip Municipality dated 08.02.202.

At this stage, the plaintiff filed such application with the proposed amendments which are as follows.

“a) that a decree be passed by declaring that the plaintiff is the absolute owner in respect of A schedule property.

b) that a mandatory injunction be passed by directing the defendant No.1 to demolish the illegal construction over the B schedule property.

c) that a decree for permanent injunction be passed restraining the defendant No.1 from creating any disturbance in the peaceful possession of the plaintiff in respect of the A schedule property.

d) that a decree for permanent injunction be passed by directing the defendant No-1 from creating any nuisance.

e) that a decree for permanent injunction be passed declaring that the plaintiff has every right to enjoy light and air as easement right.

f) that a decree for permanent injunction be passed restraining the defendant No1 from raising any sort of illegal construction in respect of B schedule property.

g) that a decree for permanent injunction be passed restraining the defendant No-1 from encroaching the A schedule property.

h) that a decree be passed for any other relief or reliefs which Your Honour may deem fit and proper.”

Now the matter to be considered as to whether the amendment can be allowed at this stage or not.

The recent decision of the Hon'ble Supreme Court, it is decided that the essence of the provision is that the amendment in question must be in the nature to determine the real question of controversy and in any event such amendment is carried out by a party post the commencement of trial, the Hon'ble Court must while granting such relief to amend ought to come out to a conclusion that such an application for amendment would not have been allowed for that particular point of time when the same was actually placed.

It is further observed in catena of decisions while considering the application under Order VI Rule 17 the Court must take very lenient approach.

In this case the trial has not yet commenced and the suit was filed for declaration and in view of the post development of certain factors the suit is to be for the declaration and recovery of possession.

The opposite party herein did not deny the allegation levelled against him by filing any written objection nor appeared before this Court also to controvert the allegations put forward against him.

In view of the facts and circumstances, this Court is also of the view that the lenient approach

should be considered since the trial was not commenced and the mere granting of amendment will not prejudice to the opposite party since he will have the opportunity to controvert the same by filing additional written statement. More so the learned Trial Court also considered that there were contain post suit development which compelled the plaintiff to file the amendment application. The purpose of incorporating the amendment to avoid multiplicity of the proceeding and proper adjudication. If the plaintiff is permitted to incorporate the subsequent development the multiplicity may also be avoided. However the defendant/opposite party to be given opportunity to controvert the allegation by filing additional written statement.

In the above facts and circumstances, the instant revisional application stands allowed. The order passed by the learned trial Court hereby set aside.

In view of the above, CAN 2 of 2025 is also disposed of.

Let a copy of this be sent to the Court below for necessary information.

Urgent certified copy of this order, if applied for, be given to the learned advocates for the parties on usual formalities.

(CHAITALI CHATTERJEE (DAS), J.)

